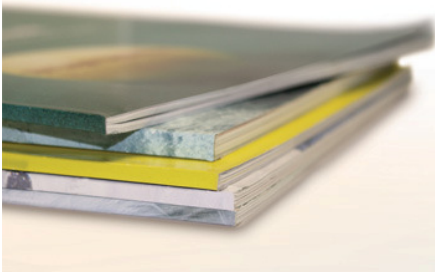


Third Party Planning Appeals



BY TIM HART

Perhaps the most controversial aspect of the Planning and Building (Jersey) Law 2002, (“the Law”) was its introduction of provision for third party planning appeals. Indeed, there was a debate on this topic, which was one of the main reasons why the Law was amended twice before finally being brought into force several years after its initial enactment.

When a planning permission is granted, the Law gives a right of appeal to any person (not just individuals, but companies and other corporate bodies) who has an interest in the land, is resident on land or any part of land that is located within 50 metres of the site to which the planning permission relates. The right only arises, however, if that person has made a written submission to the Planning Minister, objecting to the proposed development prior to the permission being granted. Any such appeal must be made within 28 days of the planning permission being granted. Accordingly, the Law provides that no permission shall take effect during this 28 day period. If a third party appeal is brought, the permission continues in this suspended state until the appeal is withdrawn or determined.

The third party appeal procedure has not produced a flood of appeals but has been invoked in some cases. Cases that have resulted in judgments of the Royal Court provide useful guidance as to the court’s approach.

In both of the third party appeal judgments handed down by the court in 2009, the court emphasised that “...to interfere with a decision of the Minister, the court has to be satisfied the decision was both mistaken and

unreasonable...” It is not enough for the court to decide that the decision made by the Minister would have been preferable. The Minister’s decision has to be considered to be positively unreasonable with a “margin of appreciation” before a decision is considered to be wrong or unreasonable. It should be noted, the same test is applied when an applicant for planning permission brings an appeal against the Minister challenging a refusal of permission or the attaching of particular conditions.

Factors leading to the court declaring the Minister’s decision unreasonable will be varied and each case will have its own distinctive facts. However, it is worth noting that in both the 2009 judgments, the court based its decision on a failure by the Minister or his Department to make sufficient enquiries in a particular direction.

In the case **Smith v. The Minister for Planning & Environment** concerning proposed extensions to a substantial house in Park Estate. The Assistant Director of Planning Development Control failed to go out on site, which proved fatal, since the court was clear that the impact on the neighbouring property (owned by the appellants) could not be properly assessed without a site visit.

In the case **Dunn v. The Minister for Planning & Environment and Dandara Jersey Limited** relating to Dandara’s proposed development at Westmount. The appellant, who owned an apartment at Park Heights, objected to planning on the basis that the proposed new blocks would have an adverse effect on the enjoyment of his apartment.

Here, the Minister himself had visited the appellant's apartment but the court revoked the planning permission on the basis that it was not reasonable for the Minister to have made his decision without having obtained perspective drawings and expert advice in relation to deprivation of daylight and sunlight.

The third party appeal legislation is bound not to be universally popular. Whilst those living or owning property close to proposed development sites have a useful tool to seek to prevent unreasonable development 'in their back yard'. Those seeking planning permission (for everything from a small domestic extension to a multi-million pound project) may well consider this to be at best a further bureaucratic hurdle and at worst an opportunity for

important, often socially desirable, developments to be held up despite having been exposed to lengthy and careful deliberation in the Planning Department. With the prospect of challenge by both unsuccessful applicants and aggrieved third parties, the Minister may be tempted to feel that he risks being damned if he does and damned if he doesn't!

However, if the procedure is not abused and the Royal Court's judgments are able to assist the Minister and his Department to further improve the difficult process by which decisions on planning applications are taken, then perhaps all can agree that third party appeals have their benefits.

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April 2010

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